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STATE REGISTER

STATE OF MINNESOTA

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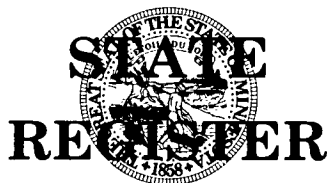
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VOLUME 10, NUMBER 7

August 12, 1985

Pages 373-412



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
8	Monday August 5	Monday August 12	Monday August 19
9	Monday August 12	Monday August 19	Monday August 26
10	Monday August 19	Monday August 26	Monday September 2
11	Monday August 26	Friday August 30	Monday September 9

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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CONTENTS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 1-7, inclusive 376

PROPOSED RULES

Human Services Department

Proposed Rules Relating to Parental Fees for
Children Placed in 24-Hour Out-of-Home Care 378

Pharmacy Board

Proposed Rules Relating to Pharmacy; Continuing
Education 383

ADOPTED RULES

Energy and Economic Development Department Energy Division

Adopted Rules Relating to Minimum Mandatory
Energy Efficiency Standards for Residential
Rental Units; Definition of Good Cause;
Establishment of Fine Schedule 391

OFFICIAL NOTICES

Commerce Department

Architecture, Engineering, Land Surveying, and Landscape Architecture Board

Outside Opinion Sought Concerning Amendments to
Rules Governing Fees, the Examination of
Architects, Engineers, Land Surveyors and
Landscape Architects and the Proposed Adoption
of Minimum Standards of Practice for Land
Surveyors 391

Energy and Economic Development Department

Outside Opinion Sought Concerning Proposed
Amendments to State Plan Governing Institutional
Buildings Grants Program 392

Energy and Economic Development Department Energy and Economic Development Authority

Public Hearing on Proposed Project and Issuance of
Bonds Under Minnesota Statutes, Chapter 116M,
Exclusive—Minnesota Agri-Resources,
Incorporated 392

Energy and Economic Development Department Financial Management Division

Availability of Issuance Authority in Competitive
Pool 393

Health Department

Health Systems Division

Outside Opinion Sought Regarding Proposed Rules
Governing Health Maintenance Organizations 394

Human Services Department

Outside Opinion Sought Concerning Rules
Governing Child Day Care Center Licensure 394

Jobs and Training Department

Outside Opinion Sought Regarding Proposed Rules
to Operate Programs of the Department of Jobs
and Training 395

Metropolitan Council

Public Hearing on Amendment to Housing Chapter
of the Metropolitan Development Guide 396
Review Schedule: Amendment to Housing Chapter
of the Metropolitan Development Guide 397
Review Schedule: Amendments to Metropolitan
Development Guide Regarding Metropolitan
Development and Investment Framework 397

Secretary of State's Office

Notice of Vacancies in Multi-Member State
Agencies 398

Vocational Technical Education State Board

Outside Opinion Sought Regarding Proposed Rules
Governing the Rules for Licensure of
Post-Secondary Vocational Education Personnel 399

STATE CONTRACTS

Administration Department

Office Space Wanted for Department of Human
Services 400

Administration Department

Procurement Division

Commodities Contracts and Requisitions Currently
Open for Bidding 400

Minnesota Historical Society

Contract Available for Printing of Pilot Minnesota
History Textbook 401

STATE GRANTS

Aging Board

State Funds Available for a Nursing Home Resident
and Family Council Program 402

Energy and Economic Development Department Energy Division

Community Energy Council Grant Funds Available 403

Health Department

Funds Available for Nonsmoking Demonstration
Projects 403

NON-STATE PUBLIC CONTRACTS

Minnesota Counties Computer Cooperative

Requests for Proposals for Software Products for
Property Tax Assessment 405

SUPREME COURT

Decisions Filed Friday, August 2, 1985 405

TAX COURT

Decisions Filed July 29, 1985 406

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issues 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the *Minnesota Rules 1983*.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

DEPARTMENT OF COMMERCE

2605.0100-.0400 [9 SR 1018, 1607] (adopted)	353
Chap. 2610; 2745 (proposed repeal)	41
2740.4300 (proposed)	43
2700.2100; .2200; .2300 [second notice] (proposed repeal)	89
2770.6500; .6800 (proposed)	42
2785.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600 [9 SR 946, 1543] (adopted)	274
2790.0550; .0100; 2800.4600; 2875.1051 [9 SR 1782] (adopted)	274
2791.0100 (second notice)	267
2875.0150; .0180; .0185; .1590; .2410; .2490; .2500; .2510; .3000 [9 SR 1296] (adopted)	275
2875.0180, s.2; .3920; .3930 [9 SR 1296] (proposed repeal)	275
2810.3200; .9930; .9940 [9 SR 1609] (adopted)	276
2860.5400 [9 SR 1679, 1783] (adopted)	276
2880.0050-.0800 [9 SR 956] (adopted)	66

SENTENCING GUIDELINES COMMISSION

3000.0100-.0600 (proposed)	14
--------------------------------------	----

STATE BOARD OF EDUCATION

3500.1150 [9 SR 1680] (adopted)	16
---	----

ENERGY, PLANNING AND DEVELOPMENT

Energy Division

4170.4105; .4110 [9 SR 2437] (adopted)	391
4200.2100-.4050; .4300 (proposed)	8
4200.2100, s.3,6; .2200, s.3; .2500; .2700; .3000, s.3,4,9,10; .3000; .3400; .3500; .3600; .3700; .3800 (proposed repeal)	8
4200.4500; .4600; .4700; .4800; .4900; .5000 (proposed)	5

DEPARTMENT OF HEALTH

4615.0500 [9 SR 2365] (adopted)	276
---	-----

HIGHER EDUCATION COORDINATING BOARD

4830.1000-.1500 (proposed supercession)	90
4830.1550-.1556 [Emer] (proposed)	90
4850.0010-.0018 [Emer] [9 SR 1783; 2400] (adopted)	66

MN HOUSING FINANCE AGENCY

4900.1200; .1210 [9 SR 2400] (adopted)	354
4900.1700-.1703 [9 SR 2472] (adopted)	353

DEPARTMENT OF LABOR AND INDUSTRY

5205.0100 [Standards] (proposed)	13
5205.0100 [Standards] (adopted)	354
5220.1400 [9 SR 2172] (adopted)	17
5223.0010; .0020; .0030; .0040; .0060 (proposed)	313

MINNESOTA RULES AMENDMENTS AND ADDITIONS

DEPARTMENT OF NATURAL RESOURCES

6115.0010; .0020; .0030; .0060;
.0080; .0090; .0110; .0130 (adopted) 236
6131.0010-.0030; .0100-.0340 [9 SR 1236, 1980] (adopted) . . . 277

MN BOARD OF PHARMACY

6800.1500; .1600; .2250; .3100; .3110; .3120; .3650;
.9900 (proposed) 383
6800.1500, s.8 (proposed repealer) 383

BOARD OF PEACE OFFICER STANDARDS & TRAINING

6700.1100; .1101; .1200; .1201 [9 SR 2576] (adopted) 354

POLLUTION CONTROL AGENCY

7001.0650; .0135; .0214 [9 SR 2833] (adopted) 70
7035.1100-.1115 (proposed) 97

Water Quality Division

7075.0100-.0432; .2000; .2200 [9 SR 1793] (adopted) 278

DEPARTMENT OF PUBLIC SAFETY

7415.0500 (proposed) 183

PUBLIC SERVICE DEPARTMENT

7600.6800; .7200; .7210; .7500; .7700; .7750; .7900;
7650.0100 (proposed) 269

REVENUE DEPARTMENT

Property Equalization Division

8100.0300 [9 SR 2374] (adopted) 18
8122.0300-.1600 (proposed) 185

SECRETARY OF STATE

8260.0100; .0200 [9 SR 2173] (adopted) 70

SMALL BUSINESS FINANCE AGENCY

8300.3091-.3097 (proposed) 138
8300.3091-.3097 [Emer] (withdrawn) 140
8300.5000-.5006 [Emer] (adopted) 226

WASTE MANAGEMENT BOARD

9200.6000-.6800 [Emer] (proposed) 220
9200.9501-.9504; .9506; .9508 (proposed) 106
9200.9501, s.4; .9504, s.1 (proposed repeal) 106

DEPARTMENT OF PUBLIC WELFARE

(Now HUMAN SERVICES)

9500.1090-.1155 (adopted) 227
9500.1101-.1108 [Emer] (proposed) 92
9500.1210-.1221 [Emer] (proposed) 306
9510.1020-.1140 (proposed) 54
9525.0015-.0145 (second notice) 19
9525.0900-.1020 (proposed) 44
9525.1200-.1330 [9 SR 2094] (adopted) 68
9525.1800-.1930 (proposed) 141
9550.0010-.0092 (second notice) 155
9550.6200-.6240 (proposed) 378
9553.0010-.0080 (proposed) 155

WORKERS' COMPENSATION COURT OF APPEALS

9800.0100; .0200; .0400; .0500; .0700; .0800; .0900;
.1000; .1100; .1400; .1500-.1800 (proposed) 109
9800.0500, s.2; .0600; .1300 (proposed repeal) 109

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Rules Relating to Parental Fees For Children Placed In 24-Hour Out-Of-Home Care

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 200, State Office Building, 435 Park Avenue, St. Paul, Minnesota, 55155, on September 24, 1985, commencing at 9 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Peter Erickson, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7606, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9550.6200 to 9550.6240 govern the assessment and collection of parental fees by county boards or the Department of Human Services from parents of children who have mental retardation or a related condition, have an emotional handicap, or have a physical handicap. Such children must be in 24-hour out-of-home care in a facility licensed by the Department of Health or Human Services or in a state hospital.

Minnesota Rules, parts 9550.6200 to 9550.6240 include definitions; standards for applicability and exclusion; determination of the parental fee; income and household size; provisions relating to health insurance and benefits; review and redetermination of fees; notification of fee changes; provisions for variance and appeal; and collections.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 252.27 and 256.511. The cost to local public bodies of implementing the proposed rule changes will not exceed \$100,000 for either of the first two years following passage of the rule.

A fiscal note explaining the costs to local agencies of complying with the rule has been prepared according to Laws of Minnesota 1985, Special Session, chapter 10, sections 34-38. A free copy of the fiscal note may be obtained by contacting Barbara Alt, Social Services Division, Department of Human Services, Centennial Office Building, St. Paul, Minnesota, 55155, telephone: 612/297-1468.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Barbara Alt.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Gordon Buyse, Social Services Division, Department of Human Services, Centennial Office Building, St. Paul, Minnesota, 55155, telephone: 612/296-3979.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612/296-5615.

July 17, 1985

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

PARENTAL FEES FOR CHILDREN PLACED IN 24-HOUR OUT-OF-HOME CARE

9550.6200 SCOPE.

Subpart 1. Applicability. Parts 9550.6200 to 9550.6240 govern the assessment and collection of parental fees by county boards or the Department of Human Services from parents of children in 24-hour out-of-home care who:

- A. have mental retardation or a related condition;
- B. have an emotional handicap;
- C. have a physical handicap; or
- D. are in a state hospital.

Parts 9550.6200 to 9550.6240 also specify parental responsibility for medical costs of children who are not listed in items A to D, but are in 24-hour out-of-home care, and whose eligibility for medical assistance was determined without considering the parent's resources or income as specified in Minnesota Statutes, section 256B.14, subdivision 2.

Subp. 2. Exclusion. Children who are under court order and subject to Minnesota Statutes, section 260.251, subdivision 1, and who also do not fall under the provisions of Minnesota Statutes, section 252.27, are excluded from the scope of parts 9550.6200 to 9550.6240.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION —** Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

9550.6210 DEFINITIONS.

Subpart 1. Applicability. As used in parts 9550.6200 to 9550.6240, the following terms have the meanings given them.

Subp. 2. Child or children. "Child" or "children" means a person or persons under 18 years of age.

Subp. 3. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 4. Cost of care. "Cost of care" means the per diem rate established by the department or the per diem and negotiated monthly rate adopted by the county board for the 24-hour out-of-home care, treatment, and training of a child provided in a facility licensed by the Department of Health, Department of Human Services, or approved by the commissioner in accordance with the interstate placement compacts of Minnesota Statutes, sections 245.51 to 245.53, 257.40 to 257.48, and 260.51 to 260.57.

Subp. 5. County board. "County board" means the county board of commissioners in each county. When a Human Services Board has been established under Minnesota Statutes, sections 402.02 to 402.10, it shall be considered to be the county board for purposes of parts 9550.6200 to 9550.6240.

Subp. 6. County of financial responsibility. "County of financial responsibility" means the following:

A. For a child whose cost of care is paid from community social services funds allocated in accordance with title 20 of the Social Security Act, United States Code, title 42, section 1397, as amended through December 31, 1984, and Minnesota Statutes, chapter 256E, it has the meaning given in Minnesota Statutes, section 256E.08, subdivision 7.

B. For a child whose cost of care is paid from medical assistance funds allocated according to title 19 of the Social Security Act, United States Code, title 42, section 1396, as amended through December 31, 1984, and Minnesota Statutes, chapter 256B, it has the meaning specified in Minnesota Statutes, section 256B.02, subdivision 3.

C. For a child whose cost of care is paid according to title 4-E of the Social Security Act, United States Code, title 42, sections 670 to 676, as amended through December 31, 1984, it has the meaning specified in Minnesota Statutes, section 256.73, subdivision 4.

Subp. 7. Department. "Department" means the Minnesota Department of Human Services.

Subp. 8. Emotional handicap. "Emotional handicap" means a psychiatric or emotional disorder that is diagnosed by a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist; and

A. requires 24-hour out-of-home treatment or supervision; and

B. is listed in the International Classification of Diseases (I-CD-9-CM) Ninth Revision (1980), code range 290.0 to 299.0, or the corresponding code of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) Third Edition (1980), Axes I, II, or III. These publications are incorporated by reference. They are available through the minitex interlibrary loan system. They are not subject to frequent change.

Subp. 9. Income. "Income" has the meaning given it by Minnesota Statutes, section 290A.03, subdivision 3.

Subp. 10. Medical assistance. "Medical assistance" means the federal, state, and county-funded program which provides for the medical needs of eligible clients, as specified in Minnesota Statutes, chapter 256B, and United States Code, title 19 of the Social Security Act, United States Code, title 42, section 1396, as amended through December 31, 1984.

Subp. 11. Mental retardation or a related condition. "Mental retardation or a related condition" means a condition that is diagnosed in accordance with parts 9525.0015 to 9525.0145 [Emergency] and the definition of related condition in Minnesota Statutes, section 252.27, and requires 24-hour out-of-home care.

Subp. 12. Parent. "Parent" means a father or mother, natural or adoptive, as specified in Minnesota Statutes, section 259.21, subdivision 3, or a stepparent domiciled in the same household in accordance with Minnesota Statutes, section 290A.03, subdivisions 4 and 5.

Subp. 13. Physical handicap. "Physical handicap" means a physical disorder or impairment diagnosed by a licensed physician which requires 24-hour out-of-home treatment or supervision.

Subp. 14. State hospital. "State hospital" means the state administered facility for the care and treatment of persons with mental illness or mental retardation under Minnesota Statutes, chapter 246.

9550.6220 DETERMINATION OF PARENTAL FEE.

Subpart 1. Parental responsibility. The extent to which a parent is responsible for reimbursing the county of financial responsibility or the department for the cost of care must be determined according to subparts 2 to 13.

Subp. 2. Determination of household size. Parents and their dependents, as specified in Minnesota Statutes, section 290A.03, subdivision 7, shall be counted as members of the household when determining the fee.

Subp. 3. Determination of income. Income must be determined according to Minnesota Statutes, section 290A.03, subdivision 3 (Property Tax Refund Act).

Subp. 4. Percentage schedule. The department shall provide the county of financial responsibility with a schedule which is revised annually in accordance with items A to D. The schedule must specify the percentage rate that shall be applied to the parent's income to determine the parental fee. The schedule must be designed in the following manner:

A. The household size matrix must indicate a range of one to ten or more persons using incremental increases of one.

B. The income matrix for each household size must begin at 60 percent of state median income derived from the most recent annual State Median Income for Household Size published in the Federal Register by the United States Department of Health and Human Services according to the Code of Federal Regulations, title 45, part 96.85, as amended through December 31, 1984. Parents of households with income between zero and 60 percent of state median income shall be assessed at a rate of zero percent of income and shall pay no fee.

C. Parents of households with incomes at or above 115 percent of state median income, as specified in item B, shall be assessed a fee at a rate of five percent of income.

D. The schedule must provide for eight equal incremental increases in income between 60 percent and 115 percent of State Median Income for Household Size as specified in items B and C. The first percentage increment applied to the income matrix must be one percent with increases of one-half percent thereafter.

Subp. 5. Annual schedule revision. The department shall provide counties with a revised schedule within 30 days after the annual revision of the State Median Income for Household Size is published in the Federal Register.

Subp. 6. Determination of parental fee. The monthly parental fee assessed must be determined according to parts 9550.6200 to 9550.6250 and the following formula:

A. Household size must be determined as specified in subpart 2.

B. Income must be determined as specified in subpart 3.

C. Using the household size and income figures in items A and B, refer to the percentage schedule supplied by the department according to subpart 4 and determine the applicable percent to be applied to the parent's income.

D. The monthly parental fee must be determined by multiplying the income from item B by the percentage from item C and dividing the product by 12.

Subp. 7. State hospital placements. As specified in Minnesota Statutes, sections 246.51 and 246.511, under no circumstances shall a parent with an annual income of \$11,000 or less and a child in a state hospital be assessed a fee. As specified in Minnesota Statutes, sections 246.51 and 246.511, a parent with a child in a state hospital shall be assessed a fee based on income determined in accordance with parts 9550.6200 to 9550.6240 or ten percent of the cost of care for the child, whichever is less.

Subp. 8. Payment in excess of fee. Parents may voluntarily pay a fee greater than that determined by the formula in subpart 6.

Subp. 9. Parental responsibility for clothing or personal needs. Payment of the parental fee specified in subpart 6 does not exempt the parent from responsibility for the child's clothing and personal needs not included in the cost of care, except as specified in Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 10. Discharge. The full monthly parental fee must be assessed unless the child is discharged and spends less than a full month in 24-hour out-of-home care. In this case, the full fee must be reduced only if the actual cost of care during that month is less than the regular fee.

Subp. 11. Number of fees. As specified in Minnesota Statutes, section 252.27, subdivision 2, parents who have more than one child in 24-hour out-of-home care shall not be required to pay a fee for more than one child.

Subp. 12. Separate households. Parents who have established separate households as specified in Minnesota Statutes, section 290A.03, subdivision 4, shall each pay a fee using the formula in part 9550.6220, subpart 2, except for parents whose fee responsibility is satisfied pursuant to subpart 13.

Subp. 13. Child support payments. Child support payments that are established by the court in accordance with Minnesota Statutes, section 518.17, for a child in 24-hour out-of-home care, must be considered a resource of the child, be applied directly toward the cost of care, and satisfy the parental fee responsibility of the noncustodial parent.

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PROPOSED RULES

Subp. 14. Fees in excess of cost. If the parental fee exceeds the monthly cost of care for the child, the parent shall be responsible for the lesser amount.

9550.6225 HEALTH INSURANCE PREMIUMS AND BENEFITS.

If at the time of placement the child has health care insurance or other enrollment or subscriber benefits, the benefits must be considered a resource of the child and applied directly to the cost of care.

If the child is eligible for health care benefits or insurance under Minnesota Statutes, chapter 62A, 62C, 62E, or 64A, and the parent fails to complete the necessary application forms, refuses to allow the county of financial responsibility or department to bill the insurer or benefactor, or discontinues health premiums, enrollment or subscriber fees for a child who is otherwise eligible for those benefits, then the parent shall be responsible for any medical expenses incurred while the child is in care that are not routinely included in the facility's per diem or negotiated rate for the child and that would have been covered by the health care insurance or benefits.

Payment by the parent of any health care benefit, insurance, subscriber, or enrollment fee shall not nullify parental responsibility for the fee. The parental fee must be assessed in addition to any health care benefit, insurance, subscriber, or enrollment fee, unless the benefit directly reduces the facility's per diem or negotiated rate for medical care that would routinely be provided for the child. If the benefit directly reduces the facility's per diem or negotiated rate for medical care that would routinely be provided for the child, the premiums and fees must be deducted from the parental fee.

9550.6228 REVIEW AND REDETERMINATION OF FEES.

Parental fees must be reviewed by the county board or the department:

- A. on an annual basis according to parts 9550.6220 to 9550.6240;
- B. when there is a change in household size as specified in part 9550.6220, subpart 2;
- C. when there is a change in the cost of care; or
- D. when there is a sudden loss of income due to unemployment for 30 consecutive days or due to the death, severe disability, or illness of a parent.

9550.6229 NOTIFICATION OF CHANGE IN FEE.

If the fee assessed to a parent with a child in 24-hour out-of-home care is increased as a result of parts 9550.6200 to 9550.6240, the increase must not be effective until a notice of the increase has been sent by the agency or department to the parent at least 30 days in advance of the effective date of the increase.

9550.6230 VARIANCE FOR HARDSHIP AND APPEALS.

Subpart 1. Variance for hardship. A variance of the parental fee determined according to parts 9550.6220 to 9550.6240 may be requested any time and the parental fee varied when:

A. There are medical expenditures by the parent for a member or members of the household that together represent more than 20 percent of a parent's income as defined in part 9550.6210, subpart 10, and are not covered by insurance or health care benefits.

B. There are sudden and unusual expenditures by the parent that are necessary to meet the basic needs of the family and are not covered by insurance or health care benefits. Such expenditures must not include education costs.

Subp. 2. Procedures. A parent may request a variance from parts 9550.6200 to 9550.6240. The request must be submitted to the county board or department, include the section of parts 9550.6200 to 9550.6240 with which the parent cannot comply, and state why compliance with the specified section would cause undue hardship.

Subp. 3. County authority. The commissioner shall delegate to the county board the authority to grant variances according to parts 9550.6200 to 9550.6240 for children in 24-hour out-of-home placement other than a state hospital.

A. When the county board receives a written request for a variance, the county board shall grant or deny the request and mail the written decision to the parent within 30 days after the request is received. If the county board denies the request for a variance, the parent shall be informed at the time of the denial of the reasons for the denial which address the specific hardships raised by the parent, and of the right to appeal the denial to the department.

B. If the department denies the parent's request for a variance, the parent shall be informed at the time of denial of their right to appeal the department's decision according to Minnesota Statutes, sections 246.55 and 256.045, subdivisions 2 and 3.

9550.6240 COLLECTIONS.

The county board shall be responsible for the assessment and collection of parental fees for children in 24-hour out-of-home

placement facilities other than state hospitals. The department shall be responsible for the assessment and collection of fees for children in state hospitals.

EFFECTIVE DATE. Minnesota Rules, parts 9550.6200 to 9550.6240 are effective 90 days after publication of the notice of their adoption in the *State Register*.

Board of Pharmacy

Proposed Rules Relating to Pharmacy; Continuing Education

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room 105 at the Minnesota Department of Health Building, 717 Delaware St. SE, Minneapolis, Minnesota 55414, on September 12, 1985, commencing at 10:00 a.m.

All interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of hearing which is to be included in the hearing record may be mailed to Allan W. Klein, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7609. Unless a longer period not to exceed 20 calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The rule hearing procedure is governed by Minn. Stat. 14.14-14.20 and by Minn. Rules p. 1400.0200-1400.1200 (9 MCAR 2.101-2.113). Questions about procedure may be directed to the Administrative Law Judge.

Comments received during the comment period shall be available for review at the Office of Administrative Hearings. The agency and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period.

If adopted, the proposed rule changes would establish a system of provider approval for continuing professional education providers in addition to the existing program approval system, elaborate on the "kickback" aspect of unprofessional conduct, establish a requirement for patient medication profiles, provide an alternative method for the transferring of prescriptions from one pharmacy to another, amend the labeling requirements for poisons, and allow the board to grant waivers and variances from existing standards under certain circumstances.

A copy of the proposed changes is attached to this notice. One additional, free copy may be obtained by writing to the Board of Pharmacy, 717 Delaware Street Southeast, Room 351, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

The statutory authority of the Minnesota Board of Pharmacy to make the proposed rules' changes is contained in Minn. Stat. 151.06 subd. 1(9).

The proposed rule changes may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed changes are therefore advised to participate in the process.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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PROPOSED RULES

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the Secretary of State.

Promulgation of these proposed rule changes will not result in the expenditure of public monies by local public bodies. In accordance with Minn. Stat. 14.115, the Board's consideration of any such effect on small businesses will be addressed in the Statement of Need and Reasonableness. Persons representing small businesses are invited to participate in the rule hearing process.

July 25, 1985

Board of Pharmacy,
David E. Holmstrom
Executive Secretary

Rules as Proposed

6800.1500 CONTINUING PHARMACEUTICAL EDUCATION.

Subpart 1. Definitions. Definitions:

A. ~~"Accredited program"~~ means those "Approved continuing education" means those continuing pharmacy education programs approved by the board or made available by an approved provider. These programs may take the form of classes, conferences, correspondence study courses, institutes, lectures, professional meetings, programmed learning courses, journal readings, seminars, study groups, or ~~comparable other program formats commonly accepted by educators as legitimate adult educational activities in continuing pharmaceutical education which are accredited by the board of pharmacy.~~

B. ~~"Accredited program of continuing pharmaceutical education"~~ means that a pharmacist must complete at least 30 hours of credit in programs which are accredited by the board of pharmacy "Approved provider" means any association, corporation, educational institution, organization, group, or person who has been recognized by the Board of Pharmacy, in accordance with subpart 3, as having met its criteria indicative of the ability to provide quality continuing education programs or who has been recognized by the board as being approved by the American Council on Pharmaceutical Education for the provision of quality continuing education programs.

C. "Continuing pharmaceutical education" is a planned learning experience beyond a formal undergraduate degree program designed to promote the continual development of professional knowledge, professional skills, and professional attitudes on the part of the practitioners and shall include but is not limited to professional postgraduate education in any of the following subjects:

- (1) properties and actions of drugs and drug dosage forms;
- (2) etiology, characteristics, and therapeutics ~~and~~ of the disease state;
- (3) pharmacy practice; or
- (4) legal, psychological, and socioeconomic aspects of health care delivery.

Subp. 2. Minimum hours required; reporting. Commencing March 4, 1975, no annual license renewal shall be issued to a pharmacist pursuant to Minnesota Statutes, section 151.13 until such pharmacist shall have submitted to the board satisfactory evidence that he or she has completed at least 30 hours of approved continuing education during the previous two-year period. Thereafter, each pharmacist shall submit such evidence every two years. Beginning with the 1981-1983 reporting period, participation in continuing education shall be reported on October 1 of each even-numbered year. ~~The 1981-1983 reporting requirement will be prorated from March 1, 1981 to October 1, 1982 to require 24 hours of participation reportable October 1, 1982.~~ The board may grant a pharmacist, upon application, an extension of time not to exceed one year to comply with the requirements of ~~item B~~ this subpart. Such extension shall not relieve the pharmacist from complying with the continuing education requirements for any other two-year period.

Subp. 3. Accreditation Approval of programs providers. Application may be made by an association, corporation, educational institution, organization, or person to have a program be designated as an accredited program and shall be made approved provider on forms provided by the board. The applicant shall show evidence of an ability to conduct the program and must maintain records of program content and attendance for not less than three years following completion of such program. Applications shall be submitted not less than 60 days prior to the commencement of the program. The board shall assign the number of credit hours to each program and shall accredit or deny accreditation of such application within 30 days of receipt of the application provide, at a minimum, information regarding administrative and recordkeeping procedures used for past programs; a history of the content, methods of delivery, and faculty qualifications for past programs; methods of program needs assessment and development that the applicant has used; and evaluation mechanisms that the applicant has used. The applicant shall agree to maintain records of program content, evaluation summary, and attendance for at least three years following completion of each program. The application must cover the two-year reporting period for which provider approval is sought.

The board shall approve an applicant as a continuing education provider based on the applicant's compliance with the following criteria:

A. The continuing education programs must have had an identifiable administrative authority who was responsible for meeting all quality criteria and for maintaining records of program content, planning, delivery, evaluation, and attendance.

B. The programs' administrative requirements must have included:

(1) promotion and advertising of continuing education activities in a responsible fashion clearly indicating in promotional material the educational objectives of the particular activity, the nature of the audience that may best benefit from the activity, the schedule of the activity, the cost of the activity to the participant and the items covered by that cost, the amount of continuing education credit that can be earned through participation in the activity, and the credentials of the faculty;

(2) maintenance and availability of records of participation in continuing education activities adequate to serve the needs of the participants and others requiring this information; and

(3) provision of evidence to the participant, in the form of a certificate or other document, of satisfactory completion of a continuing education activity as reasonably required by the participant.

C. The educational content development must have included:

(1) Advance planning that includes a statement of educational goals, behavioral objectives, or both, that are measurable.

(2) Activities designed to satisfy educational needs which the board has determined to be appropriate.

(3) Involvement of members of the intended audience in identifying their own continuing education needs.

(4) Activities designed to explore one subject or a group of closely related subjects. If an activity involves multiple components, such as a lecture series, all segments must be devoted to integrally related subjects.

(5) Appropriate mediated material and supportive instructional material. Previously offered activities, including those in mediated forms, must have been reviewed by the provider prior to being offered to new audiences, with a view toward maintaining technical quality, timeliness, and currency of content, and faculty must have had the opportunity to update material, if they desired, before an activity was offered to a new audience.

D. The methods of delivery must have been consistent with the special needs of the program.

E. The teaching staff for a particular continuing education activity must have been competent in the subject matter and qualified by experience or preparation to the tasks and method of delivery.

F. An evaluation mechanism must have been provided to allow the participants to assess their achievement of program objectives.

G. The provider must have developed and employed evaluation techniques that assess the effectiveness of the continuing education activities, and the level of fulfillment of the stated objectives, for the purpose of provider and activity improvement if indicated.

Applicants with no history of program development in compliance with items A to G or with an incomplete history will be judged on their willingness and ability to comply with these criteria in the future.

Subp. 3a. Approval of programs. Application may be made by an association, corporation, educational institution, organiza-

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PROPOSED RULES

tion, group, or person, not presently approved as a provider, to have a program designated as an approved program. The board shall approve a continuing education program if it complies with the following criteria:

A. The provider shall submit evidence that promotion and advertising of the program will be done in a responsible fashion. For example, the promotional material should state the educational objectives of the program, the nature of the audience for which the program is intended, the program schedule, the cost of the program and the items covered by that cost, the amount of continuing education credit that can be earned through the program, and the credentials of the program faculty.

B. The provider agrees to maintain records of participation in or attendance at the program for not less than three years and agrees to make them available to the board upon request.

C. The provider agrees to provide evidence to the participant of satisfactory completion of the program.

D. The program provider submits evidence that:

(1) program planning involved members of the intended audience;

(2) the program is designed to satisfy identified educational needs;

(3) the program includes a statement of educational goals, behavioral objectives, or both, that are measurable;

(4) the program, if it involves multiple components, is devoted to integrally related subjects; and

(5) any mediated and supportive instructional material is designed to be used in a suitable and appropriate manner.

E. The method of program delivery is consistent with the special needs of the program.

F. The teaching staff appears to be competent in the subject matter and is qualified by experience or preparation to the task and method of delivery.

G. An evaluation mechanism is provided for the purpose of allowing the participants to assess their achievement of program objectives.

H. The provider has developed and will employ evaluation techniques that assess the effectiveness of the continuing education activities, and the level of fulfillment of the stated objectives for the purpose of provider and activity improvement if indicated.

Applications for program approval must be submitted not less than 45 days prior to the commencement of the program. The board shall assign the number of credit hours to each program and shall grant approval or deny approval of such application within 30 days of receiving the application.

Subp. 4. Revocation or suspension of ~~accredited~~ program approval. The board may deny, refuse to renew, revoke, or suspend authorization, ~~recognition~~, or ~~accreditation~~ approval previously furnished to ~~sponsors of an accredited program~~ programs or providers if the program or provider fails to conform to its application ~~accredited~~ approved by the board, fails to furnish program content as publicized, or if the ~~sponsor of~~ program or provider violates any provision of ~~Laws of Minnesota 1973 Statutes, chapter 655 section 214.12~~, or this rule.

Subp. 4a. Programs not previously submitted for approval. Pharmacists may apply for credit for attendance at programs not previously submitted to the board for approval provided that the pharmacist completes a continuing education program approval form, obtainable from the board, and submits it to the board within 45 days after completing the program. The applicant shall provide, at a minimum, the title, site, date, type, and length of the program being proposed for approval, a program outline, and a description of the type of evaluation mechanism used at the program. Approval of the program is subject to all the standards of Minnesota Statutes, section 214.12 and subparts 1, item C, and 4, items B to G.

Subp. 5. Hours of credit. Credit shall be earned on the basis of attendance at or, in the case of correspondence courses, completion of a program. ~~Failure to attend or complete an accredited program shall be the only reason for rejecting program credit hours.~~ Credit for an identical program may be given only once to any individual during any reporting period.

Subp. 6. Credit for presentation of professional lectures. Pharmacists may apply for credit for presentation of in-service training programs or lectures consisting of subjects included in the definition of Continuing Pharmaceutical Education; however, credit shall not be allowed for the preparation or presentation of programs or lectures for which academic credit may be granted to the pharmacy student. Such pharmacists need not apply for accreditation of the program provided that hours of credit applied for do not exceed the number of hours required to present the in-service training program or lecture, and, further provided that information, such as a syllabus or lecture manuscript, be made available upon request to document the presentation of the in-service training. Credit for presentation for the in-service programs or other lectures these presentations will be granted only once for any given program or lecture to any individual during any reporting period.

Subp. 7. ~~List~~ Record of ~~accredited~~ approved programs. The board shall maintain a record of ~~accredited~~ approved providers and approved programs including the hours of credit assigned to each program. ~~Such records may be made available to any registrant upon request.~~

Subp. 8. [See Repealer.]

Subp. 9. Program promotion. No reference shall be made by a program ~~sponsor~~ provider in publicizing a program that it is an ~~“accredited approved program sponsor provider”~~ unless ~~he the provider~~ is so ~~accredited approved~~ approved by the ~~board or the~~ American Council on Pharmaceutical Education ~~of~~. No other reference indicating endorsement by the board may be made except as follows: “This program is ~~accredited approved~~ approved by the Minnesota Board of Pharmacy for ___ hours of continuing education credit.”

6800.1600 ~~ADVISORY TASK FORCE ON CONTINUING EDUCATION~~ ADVISORY COMMITTEE.

The continuing education advisory task force committee shall consist of not more than ten members. Five members of the advisory ~~task force committee~~ shall be pharmacists designated by the Minnesota State Pharmaceutical Association, three members shall be pharmacists designated by the College of Pharmacy of the University of Minnesota, and two members shall be designated by the board. The ~~advisory task force on continuing education~~ advisory committee shall meet at least quarterly and shall annually elect a chairman and vice-chairman from its membership. The secretary of the board of pharmacy shall act as ~~secretariat~~ secretary to the ~~advisory task force committee~~.

6800.2250 UNPROFESSIONAL CONDUCT.

Subpart 1. Prohibited conduct. Unprofessional conduct shall include, but is not limited to, the following acts of a pharmacist or pharmacy:

- A. The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated;
- B. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy;
- C. Refusing to compound and dispense prescriptions that may reasonably be expected to be compounded or dispensed in pharmacies by pharmacists;
- D. Participation in agreements or arrangements, with any person, corporation, partnership, association, firm, or others involving rebates, “kickbacks,” fee-splitting, or special charges in exchange for professional pharmaceutical services; including but not limited to the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any licensed health care facility or the owner, operator, or administrator of a licensed health care facility as compensation or inducement for placement of business with that pharmacy or pharmacist. Goods or services which may not be provided free or below cost include consultations required by state and federal regulatory bodies, drug reference texts, computer print-outs of physicians’ orders or the provision of other forms used in charting, drug carts, or anything else not directly related to the drug dispensing process. Monetary rebates or discounts which are returned to the actual purchaser of drugs as a cost justified discount or to meet competition are permitted if the rebates or discounts conform with other existing state and federal rules and regulations.
- E. Discriminating in any manner between patients or groups of patients, for reasons of religion, race, creed, color, sex, age, or national origin;
- F. Refusing to consult with patrons or patients concerning contents, therapeutic values, and uses of prescription or nonprescription drugs, chemicals, or poisons;
- G. Requiring an individual patient to be a member of any organization, association, or other group as a condition for obtaining the professional services of a pharmacist;
- H. The violation of any law, rule, regulation, or ordinance of the state or any of its political subdivisions, including the board of pharmacy, or the United States government, or any agency thereof relating to the practice of pharmacy;
- I. Divulging or revealing to others the nature of professional pharmaceutical services rendered to a patient without his expressed consent orally or in writing or by order or direction of a court (this shall not prevent pharmacies from providing information copies of prescriptions to other pharmacies or to the person to whom the prescription was issued and shall not prevent pharmacists from providing drug therapy information to physicians for their patients); ~~and~~
- J. Participation in institutional drug distribution as a consultant without providing pharmaceutical services in accordance with accepted principles of pharmacy practice and in compliance with federal and state laws or rules.

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PROPOSED RULES

Subp. 2. Improper advertising. Prescription drug price information may be provided to the public only by a pharmacy, so long as it is not violative of any federal or state laws applicable to the advertisement of such articles generally and if all of the following conditions are met:

A. No representation or suggestion concerning the drug's safety, effectiveness, indications for use, or competitive comparison shall be made.

B. No reference shall be made to controlled substances listed in schedule II-IV of the latest revision of the Federal Controlled Substances Act, and the rules of the Minnesota Board of Pharmacy.

C. The termination date for the prices listed shall be stated in the ad.

Subp. 4. 3. Accessories to illegal drug traffic. The selling, giving away, or otherwise disposing of accessories (i.e., glassine papers, empty capsules, quinine, lactose, or similar products), chemicals, or drugs found in illegal drug traffic is unprofessional conduct by a pharmacist when he or she knows or should have known of their intended use in illegal activities.

6800.3100 COMPOUNDING AND DISPENSING.

Subpart 1. Duties. The practice of compounding and dispensing a prescription includes, but is not limited to, the following acts, which shall be performed only by a pharmacist, assistant pharmacist, or pharmacist-intern under the immediate and personal supervision of a pharmacist:

A. to H. [Unchanged.]

I. supervising nonpharmacist supportive personnel utilized in the performance of certain pharmacy tasks (the use of such supportive personnel shall be in accordance with ~~the provisions of part 6800.3850~~).

Subp. 2. Verification. Verification of validity and propriety under subpart 1, item C, must be of the original prescription order. A copy, rewritten or verbal, is not acceptable.

Subp. 3. Certification. In certifying and documenting the completed prescription order under subpart 1, item F, the pharmacist shall include:

A. checking of the original labeled container from which the medication was withdrawn;

B. checking of the labeling on the prescription medication container;

C. checking the contents of the prescription medication container and the appearance of the total product;

D. checking the patient's medication profile, ~~when utilized~~, for possible therapeutic incompatibilities and the accuracy of the addition to the profile of the medication dispensed; and

E. initialing of the prescription by the pharmacist performing the certification.

Subp. 4. Exception. The provisions of this rule shall apply to all pharmacies. Provided, however, that nothing in this rule shall prevent pharmacists in hospitals from dispensing to hospital inpatients according to ~~the provisions of parts 6800.7100 to 6800.7950~~.

6800.3110 PATIENT MEDICATION PROFILES.

Subpart 1. System required. A patient profile record system must be maintained in all pharmacies for persons for whom prescriptions are dispensed. The patient profile record system must be designed for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile card may be maintained for all members of a family living at the same address and possessing the same family name.

Subp. 2. Minimum information required. The following information, at a minimum, must be recorded:

A. the family name and the first name of the person for whom the medication is intended;

B. the address of the patient;

C. an indication of the patient's age group, such as infant, child, or adult; and

D. a list of all prescriptions obtained by the patient at the pharmacy maintaining the profile showing the prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber.

Subp. 3. Recording allergies. The pharmacist shall attempt to ascertain and shall record any allergies, idiosyncrasies, and chronic conditions of the patient and the identity of any other medications being taken by the patient which may relate to drug utilization. If there are none, this must be indicated on the profile.

Subp. 4. Drug interactions. Upon receiving a prescription, a pharmacist shall examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potentially harmful interaction or reaction, the pharmacist shall take appropriate steps to avoid or minimize the problem which shall, if necessary, include consultation with the prescriber.

Subp. 5. Duration of recordkeeping. A patient profile record must be maintained for a period of not less than two years from the date of the last entry in the profile record. This record may be in a hard copy or a computerized form.

Subp. 6. Certain profiles not required. If a patient does not want a patient profile established, the patient shall state it in writing to the pharmacist. The pharmacist shall not prepare a profile as otherwise would be required by this part.

6800.3120 TRANSFER OF PRESCRIPTIONS BETWEEN PHARMACIES.

Subpart 1. Authorization to dispense transferred prescription. A prescription label, a written copy of the prescription, or a telephone report of a prescription from another pharmacy may be used for informational purposes only and has no legal status as a valid prescription order. A pharmacist who receives a label, copy, or report of a prescription from another pharmacist shall either contact the prescribing practitioner for authorization to dispense the prescription or shall comply with subparts 2 to 6.

Subp. 2. Conditions of transfer. A pharmacy may transfer original prescription information for the purpose of refilling a prescription if the information is communicated directly by one licensed pharmacist to another.

Subp. 3. Duties of transferring pharmacist. The transferring pharmacist shall:

- A. write the word "VOID" across the face of the original prescription to make the prescription invalid;
- B. record on the reverse side of the invalidated prescription the name and address of the receiving pharmacy; and
- C. record the date of the transfer.

For controlled substances in Schedules III-V, the transferring pharmacist shall also record on the reverse side of the invalidated prescription the Drug Enforcement Administration registration number of the receiving pharmacy and the names of the receiving and transferring pharmacists.

Subp. 4. Duties of receiving pharmacist. The pharmacist receiving the transferred prescription information shall write the word "transfer," "copy," or a word of similar import on the face of the transferred prescription, and shall provide all information required by law to be on a prescription, including:

- A. the date of issuance and of filling of the original prescription;
- B. the original number of refills authorized;
- C. the number of valid refills remaining;
- D. the date of last refill from original prescription;
- E. the original prescription number from which the prescription information was transferred; and

F. the transferring pharmacy's name and address and, in the case of a controlled substance in Schedules III-V, the transferring pharmacy's Drug Enforcement Administration registration number and name of transferring pharmacist.

Subp. 5. Retention of prescription. The transferring pharmacist shall keep the original prescription for at least two years from the date of last filling. The receiving pharmacist shall keep the transferred prescription for at least two years from the date of last filling.

Subp. 6. Notice to patient of prescription invalidation. The pharmacist conferring with the patient at the time of the transfer request shall inform the patient that the original prescription has been invalidated at the pharmacy from which it was obtained.

Subp. 7. Computerized prescription recordkeeping system. A computerized prescription recordkeeping system must satisfy all the requirements of subparts 2 to 6 including invalidation of the original prescription even when the prescription is transferred between pharmacies accessing the same prescription records or between pharmacies of the same ownership.

Subp. 8. Transfer of prescription by presentation of container. When the transfer of original prescription information is initiated by the receipt of a prescription container previously filled at another pharmacy, the receiving pharmacist shall notify the transferring pharmacist that the prescription is being transferred. All information required by subparts 2 to 6 must be exchanged.

Subp. 9. Unprofessional conduct. The board may consider it unprofessional conduct to reveal to others the nature of professional pharmaceutical services rendered to a patient without the express oral or written consent of the patient or without an order or direction of a court. A pharmacy may, however, provide informational copies of a prescription to another pharmacy or to the person to whom

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

PROPOSED RULES

the prescription was issued as provided in this part. A pharmacist may also provide drug therapy information to a physician for the patient.

The board may consider it unprofessional conduct for a pharmacist to refuse to provide a transfer of original prescription information to another pharmacist who is acting on behalf of a patient and who is making a legal request for this information under this part.

Subp. 10. Schedule II controlled substances. Nothing in this part authorizes the transfer of a prescription for a Schedule II controlled substance. A new written prescription personally signed by the prescribing practitioner is required prior to dispensing a Schedule II controlled substance.

6800.3650 LABELING OF POISONS.

All poisons sold, except when in the original manufacturer's container or on the written prescription of a licensed practitioner, shall bear a label containing the word "Poison," the name and quantity of the substance, and the name and business address of the seller. In addition the package labeling shall contain the following information in accordance with the Hazardous Substance Labeling Act:

- A. name of substance;
- B. the name and business address of the manufacturer or repackager;
- C. the word "POISON" in letters no smaller than the largest point on the label ~~accompanied by the "Mr. Yuk" symbol~~ (for extremely dangerous substances this must be accompanied by the "skull and crossbones");
- D. the word "Caution," "Warning," "Danger," or some such signal word of warning together with the specific indication necessitating its use;
- E. the name and quantity of each toxic, poisonous, caustic, or corrosive constituent together with directions for treatment in case of accidental injury; and
- F. the added warning "Keep Out of the Reach of Children."

WAIVERS AND VARIANCES

6800.9900 VARIANCES.

Subpart 1. Right to request variance. A person subject to the rules of the Board of Pharmacy may request that the board grant a variance from any rule of the Board of Pharmacy.

Subp. 2. Submission and contents of request. A request for a variance must be submitted to the board in writing. Each request must contain the following information:

- A. the specific rule for which the variance is requested;
- B. the reason for the request;
- C. the alternative measures that will be taken if a variance is granted;
- D. the length of time for which a variance is requested; and
- E. any other relevant information necessary to properly evaluate the request for the variance.

Subp. 3. Decision on variance. The board shall grant a variance if it determines that:

- A. the variance will not adversely affect directly or indirectly, the health, safety, or well-being of the public;
- B. the alternative measures to be taken, if any, are equivalent or superior to those prescribed in the part for which the variance is requested; and
- C. compliance with the part for which the variance is requested would impose an undue burden upon the applicant.

The board shall deny, revoke, or refuse to renew a variance if the board determines that item A, B, or C has not been met.

Subp. 4. Notification. The board shall notify the applicant in writing within 60 days of the board's decision. If a variance is granted, the notification shall specify the period of time for which the variance will be effective and the alternative measures or conditions, if any, to be met by the applicant.

Subp. 5. Renewal. Any request for the renewal of a variance shall be submitted in writing prior to the expiration date of the existing waiver. Renewal requests shall contain the information specified in subpart 2. A variance shall be renewed by the board if the applicant continues to satisfy the criteria contained in subpart 3 and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance was granted.

REPEALER. Minnesota Rules, part 6800.1500, subpart 8, is repealed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Energy and Economic Development Energy Division

Adopted Rules Relating to Minimum Mandatory Energy Efficiency Standards for Residential Rental Units; Definition of Good Cause; Establishment of Fine Schedule

The rules proposed and published at *State Register*, Volume 9, Number 45, pages 2437-2438, May 6, 1985 (9 S.R. 2437) are adopted as proposed.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Outside Opinion Sought Concerning Amendments to Rules Governing Fees, the Examination of Architects, Engineers, Land Surveyors and Landscape Architects and the Proposed Adoption of Minimum Standards of Practice for Land Surveyors

Notice is hereby given that the Minnesota State Board of Architecture, Engineering, Land Surveying and Landscape Architecture is soliciting information and opinions from sources outside the Board and is preparing to promulgate amendments to rules relating to fees and examination of applicants and to promulgate a new rule relating to the Minimum Standards of Practice for Land Surveyors.

Fees for the examination of applicants are to be adjusted to more appropriately reflect the cost of examining applicants for licensing in each of the four professions regulated by the Board.

Rules relating to the examination of applicants for licensure in each of the four professions regulated by the Board are to be revised to include kinds of experience required by the Board for admission to examination.

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OFFICIAL NOTICES

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture requests information and comments concerning the subject matter of these rules.

Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

Lowell E. Torseth, Executive Secretary
Board of Architecture, Engineering, Land Surveying and Landscape Architecture
162 Metro Square Building
St. Paul, Minnesota 55101

All statements of information and comment shall be accepted until September 20, 1985. Any written material received by the Board of Architecture, Engineering, Land Surveying and Landscape Architecture shall become part of the record in the event that the rules are promulgated.

Department of Energy and Economic Development

Outside Opinion Sought Concerning Proposed Amendments to State Plan Governing Institutional Buildings Grants Program

Notice is hereby given that the Department of Energy and Economic Development (DEED) is seeking information and opinions from sources outside the department in preparing to amend the State Plan for the federal Institutional Buildings Grants Program (IBGP).

On April 30, 1985, the U.S. Department of Energy issued a final rule amending 10CFR Part 455, the regulation for the operation of IBGP. This final rule will be effective September 1, 1985. DEED is required to amend the State Plan to bring it into compliance with this final rule, and may also amend portions of the State Plan not affected by the new regulation. Amendments to the State Plan are subject to approval by the U.S. Department of Energy.

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Claudia Anderson
Energy Finance Division
Department of Energy and Economic Development
900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at 612-297-1220 and in person at the above address. All statements of information and comment shall be accepted until August 23, 1985.

Mark B. Dayton
Commissioner

Department of Energy and Economic Development Energy and Economic Development Authority

Public Hearing on Proposed Project and Issuance of Bonds Under Minnesota Statutes, Chapter 116M, Exclusive—Minnesota Agri-Resources, Incorporated

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority") or its designated representative, shall meet on August 28, 1985, at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under Minnesota Statutes, Chapter 116M, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of Minnesota Agri-Resources, Inc., a Minnesota corporation, or a limited partnership of which said company is general partner (the "Company"). Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction and equipping of a manufacturing plant complex to produce fuel-grade ethanol alcohol to be used as a fuel additive in gasoline with capacity of approximately 3.15 million gallons per year, together with related facilities for processing, distillation, evaporation, storage and treatment and aeration, and all related improvements and equipment, to be located in the City of Appleton, Swift County, Minnesota (general description of location: between Second Street West and Third Street West, north of the Pacific Chicago Milwaukee St. Paul Railroad line in the City of Appleton, Swift County, Minnesota) (the "Project"). The initial owner of the Project will be the Company, and the Project is expected to be operated and managed by the Company or its agent. It is contemplated that the ethanol alcohol produced by the Project will be sold to Tropicana Energy Company pursuant to an output contract to be mixed with gasoline by Tropicana Energy Company and sold as a fuel. The estimated maximum amount of the Authority's proposed bond issue is an amount equal to \$7,000,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by mortgage or security interest or other security arrangements to be created by the Company if subsequently required by the Authority. In addition, the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Energy Development Fund, created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the Application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the Application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

August 1, 1985

By Order of the Members of the
Minnesota Energy and Economic
Development Authority,
Mark B. Dayton
Commissioner, Department of Energy
and Economic Development, and
Chairman, Minnesota Energy and
Economic Development Authority

Department of Energy and Economic Development Financial Management Division

Availability of Issuance Authority in Competitive Pool

Pursuant to Minn. Laws 1984, ch. 582.17, subd. 2, to be codified as 474.20, the Department gives notice that the amount of Industrial Development Bond issuance authority available in the Competitive Pool as of August 5, 1985, is \$525,000.00 and will be available to qualifying Industrial Development Bond Issuers submitting qualification criteria applications by August 10, 1985. Pursuant to Minn. Laws 1984, ch. 582.16, to be codified as 474.19, non Entitlement Issuers must submit an application, a preliminary resolution, an application deposit and any other supporting documents required.

Balance of Competitive Pool on July 5, 1985	—	\$1,975,000.00
Add:		
Unused Entitlement Allocations as of August 31, 1985:		\$ N/A
Returned Allocations:		\$4,000,000.00
Total Pool Available as of August 5, 1985:		\$5,975,000.00

Allocations awarded from the Competitive Pool during the month ending August 5, 1985, are:

<u>Issuer</u>	<u>Project</u>	<u>No. of Pts.</u>	<u>Amount</u>
City of Prior Lake	Priordale Mall	5	\$ 500,000.00
City of St. Anthony	Haveline Industrial Building	4	950,000.00
Total Allocations Awarded:			\$1,450,000.00
Amount of Issuance Authority Available as of August 5, 1985:			\$4,525,000.00

OFFICIAL NOTICES

Department of Health Health Systems Division

Outside Opinion Sought Regarding Proposed Rules Governing Health Maintenance Organizations

Notice is hereby given that the State Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing health maintenance organizations. Topics currently under consideration include:

1. Arrangements for conversion to individual policies, Minn. Stat. section 62A.17, subd. 6;
2. Prohibition against discrimination in the application of copayment provisions, Minn. Stat. section 62D.02, subd. 8;
3. Statement of enrollees' rights as consumers, Minn. Stat. section 62D.07, subd. 3;
4. Second opinion related to chemical dependency and mental health, Minn. Stat. section 62D.103;
5. Annual reports, Minn. Stat. § 62D.08, MN Rule 4685.2100;
6. Quality evaluation, Minn. Stat. section 62D.04, subd. 1, Minn. Rule part 4685.1100; and
7. Fees, Minn. Stat. 62D.21, Minn. Rule part 4685.2800.

The promulgation of these rules is authorized by Minnesota Statutes § 62D.20 which permits the commissioner of health to promulgate such reasonable rules and regulations as are necessary or proper to carry out the provisions of sections 62D.01 to 62D.29.

The State Department of Health requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Judith M. Walker
HMO Unit
Room 216
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, Minnesota 55440

Oral statements will be received during regular business hours over the telephone at 623-5545 and in person at the above address. Any written material received by the State Department of Health shall become part of the record in event the rules are promulgated.

August 2, 1985

Valentine O'Malley, M.D. for
Sister Mary Madonna Ashton
Commissioner of Health

Department of Human Services

Outside Opinion Sought Concerning Rules Governing Child Day Care Center Licensure

Notice is hereby given that the Minnesota Department of Human Services is considering draft amendments of Minnesota Rules, parts 9503.0511 to 9503.0661 (formerly known as Rule 3), Child Day Care Center Licensure.

This rule is authorized by Minnesota Statutes, section 245.802, Subdivision 1, and governs the standards of licensure as a child day care center providing care for children on a regular basis for periods of less than 24 hours per day, in a place other than the children's home.

The proposed changes include revised requirements for placement of children in age categories; care of sick children; review of health practices by a licensed health professional; notices to parents concerning illness; sanitation; behavior guidance; maximum group size; staff to child ratios; qualifications to be employed as a staff member; safety; and equipment.

All interested or affected persons are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Eleanor Weber
Rules Unit
Department of Human Services
444 Lafayette Road
St. Paul, MN 55101

Oral statements of information and comment will be received during regular business hours over the telephone at 612/297-4301.

All statements of information and comment will be accepted until further notice is given. Any written material received by the Department shall become part of the hearing record.

A Notice of Intent to Solicit Outside Opinion on draft amendments to these rule parts was published in the *State Register* on May 20, 1985 (9 SR 2544). The purpose of this notice is to extend the comment period given in the May 20, 1985 notice.

Department of Jobs and Training

Outside Opinion Sought Regarding Proposed Rules to Operate Programs of the Department of Jobs and Training

Notice is hereby given that the Department of Jobs and Training is seeking information or opinions from sources outside the agency in drafting rules governing the operation of the programs assigned the new department by Minnesota Laws 1985, 1st Special Session Chapter 14, Article 9.

The promulgation of these rules is authorized by Minnesota Statutes 268.021, which permits the commissioner to adopt rules with respect to programs he administers, and specifically by:

- 1) Minn. Stat. §256.736, Subd. 3 as amended by Minnesota Laws 1985, 1st Special Session §14, Article 9, Section 17, which requires the commissioner to adopt rules to provide standards for county boards.
- 2) Minn. Stat. §256D.09 Subd. 3 as amended by Minnesota Laws 1985, 1st Special Session §14, Article 9, Section 30 which requires the commissioner to establish by rule a grant diversion process for payment of a recipient's grant or work readiness.
- 3) Minn. Stat. §356D.113 as amended by Minnesota Laws 1985, 1st Special Session, §14, Article 9, Section 31 which authorizes the commissioner of Jobs and Training to make emergency and permanent rules to carry out the Employment Experience Program.
- 4) Minn. Stat. §268.33, Subd 1 as amended by Minnesota Laws 1985, 1st Special Session, §14, Article 9, Section 43 which requires the commissioner to make emergency or permanent rules to determine the priority and eligibility for employment and placement in the development of youth employment opportunities.
- 5) Minn. Stat. §268.673 Subd 6 as amended by Minnesota laws 1985, 1st Special Session §14, Article 9, Section 53 which authorizes the commissioner to adopt rules necessary to implement the Emergency Jobs Program as amended.
- 6) Minn. Stat. §268.86, Subd 5 as adopted by Minnesota Laws 1985, 1st Special Session §14, Article 9, Section 66, Subd 5 which requires the commissioner to establish by rule the conditions under which individuals participate in services, their rights and responsibilities while participating in employment and training programs, and the services by which the service must be administered, and a means to provide fair hearing procedures governing participation.
- 7) Minn. Stat. §268.871, Subd 4(c) as adopted by Minnesota Laws 1985, 1st Special Session §14, Article 9, Section 67 which authorizes the commissioner emergency and permanent rulemaking to implement this section on local delivery and requires him to establish circumstances under which the requirements of co-location may be waived.
- 8) Minn. Stat. §268.90, Subd 2(f) and Subd 3(1) and Subd 4(7) as adopted by Minnesota Laws 1985, 1st Special Session §14, Article 9, Section 71, Subd. 2(f) which requires the commissioner to establish by rule the terms and conditions governing the participation of appropriate public assistance recipients in the Community Investment Program; requires him to make emergency or permanent rules governing plan content, criteria for approval and administrative standards; and requires him to adopt rules to set administrative standards which County boards must meet and requirements of reports which County Board must submit.
- 9) Minn. Stat. §268.91, Subd 2 and Subd 6 as adopted by Minnesota Laws 1985, 1st Special Session §14 Article 9, Section 72, Subd 2 which requires the commissioner to adopt rules to govern the Child Care Sliding Fee Program including a sliding schedule of fees for parents receiving child care services; and allows the commissioner to require by rule that the county pay to him the portion of sliding fee allocations paid by the state for which the county is responsible.

OFFICIAL NOTICES

Information and comments are requested on the following subject:

- 1) Participation, standards and responsibilities for AFDC
- 2) AFCD employment and training services exclusive of categorical and financial eligibility including supported work program, employment search and demonstration projects
- 3) Standards for counties to determine eligible persons for employment and training services including the supervision of county boards
- 4) County eligibility standards for AFDC Employment and Training services
- 5) Timely registration in General Assistance and AFDC
- 6) Grant Diversion for work readiness and AFDC assistance payments
- 7) Wage Subsidy
- 8) Sliding Fee Child Care Program
- 9) Co-location of staff with local service units
- 10) Community Investment Programs
- 11) Employment Experience
- 12) Approved training for the unemployed

Information or comments will be accepted until notice is published that the Department of Jobs and Training intends to adopt permanent rules. Information and comments should be directed to:

Mr. Donald Buckner
Minnesota Department of Jobs and Training
690 American Center Building
150 E. Kellogg Ave.
St. Paul, MN 55101
(612) 296-3627

Any written material received by the Department of Jobs and Training shall become part of the rulemaking record in the event rules are promulgated.

Joe Samargia
Commissioner
Department of Jobs and Training

Metropolitan Council

Public Hearing on Amendment to Housing Chapter of the Metropolitan Development Guide

The Metropolitan Council will hold a public hearing on Thursday, September 12, 1985, at approximately 1:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, for the purpose of receiving public comment on proposed amendments to the Housing Chapter of the Metropolitan Development Guide. The revisions concern the review guidelines for housing bond plans and programs.

Minnesota Statutes Chapter 462C requires that local governments proposing to issue housing revenue bonds submit both the housing bond plan and the individual bond programs to the Metropolitan Council for review and comment. The Housing Chapter of the Metropolitan Development Guide contains guidelines to assist the Council in reviewing these housing bond plans and programs. The revisions to the guidelines currently being proposed are in response to recent changes in Minnesota Statutes 462C. They will clarify the content and scope of the Council's comments with regard to local housing bond activities and the timeframe within which the review must be completed.

All interested persons are encouraged to attend the public hearing and offer comments on the proposed guidelines. Persons wishing to speak should register in advance by contacting Lucy Thompson at 291-6521. Written comments will be accepted until September 26, 1985. Questions on the proposed guidelines should be directed to Guy Peterson of the Council's Housing staff at

291-6527. Copies of the revisions are available free of charge from the Council's Communications Department at 291-6464. Copies are also available for public inspection beginning August 12 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, Minnesota 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, Minnesota 55401

St. Paul Public Library
Science and Industry Room
90 West Fourth Street
St. Paul, Minnesota 55102

Anoka County Library—Blaine Branch
701 Highway 10
Blaine, Minnesota 55434

Carver County Library—Chaska Branch
314 Walnut Street
Chaska, Minnesota 55318

Dakota County Library—Burnsville Branch
1101 West County Road 42
Burnsville, Minnesota 55337

Hennepin County Library—Southdale Branch
7001 York Avenue South
Edina, Minnesota 55435

Ramsey County Library—Roseville Branch
2180 North Hamline Avenue
Roseville, Minnesota 55113

Scott County Library—Shakopee Branch
235 South Lewis Street
Shakopee, Minnesota 55379

Washington County Library—Park Grove Branch
7520-80th Street South
Cottage Grove, Minnesota 55106

Metropolitan Council

Review Schedule: Amendment to Housing Chapter of the Metropolitan Development Guide

Minnesota Statutes Chapter 462C requires that local governments proposing to issue housing revenue bonds submit both the housing bond plan and the individual bond programs to the Metropolitan Council for review and comment. The Housing Chapter of the Metropolitan Development Guide contains guidelines to assist the Council in reviewing these housing bond plans and programs. The revisions to the guidelines currently being proposed are in response to recent changes in Minnesota Statutes 462C. They will clarify the content and scope of the Council's comments with regard to local housing bond activities and the timeframe within which the review must be completed.

The following is a tentative schedule for adoption of the housing bond plan review guidelines.

August 8, 1985	Metropolitan and Community Development Committee reviews proposed guidelines and recommends public hearing date.
August 8, 1985	Metropolitan Council approves proposed guidelines for public hearing purposes and sets public hearing date.
September 12, 1985	Public hearing.
September 26, 1985	Hearing record closes.
October 3, 1985	Metropolitan and Community Development Committee reviews hearing report and recommends adoption of final guidelines.
October 10, 1985	Metropolitan Council adopts final guidelines.

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or proposed guidelines, call Guy Peterson of the Council's Housing staff at 291-6527.

Metropolitan Council

Review Schedule: Amendments to Metropolitan Development Guide Regarding Metropolitan Development and Investment Framework

The Metropolitan Development and Investment Framework (MDIF) is the Metropolitan Council's plan and program for managing metropolitan resources in order to bring about the orderly and economic development of the seven-county Metropolitan Area. It

OFFICIAL NOTICES

presents the Council's philosophy, assumptions and basic directions for guiding development and change in the area. It sets general directives for all planning carried out under the Council's auspices, including transportation, sewage disposal, parks and airports.

The MDIF replaces the clear development guide chapters—this Metropolitan Development Framework (MDF) and the Metropolitan Investment Framework (MIF). Most of the concepts and policies advocated in the two separate documents have been carried over into the new combined document. However, the MDIF is more than merely a merger and update of two existing documents. It has evolved from a plan to guide growth into a plan for managing regional resources to achieve orderly and economic development.

The following is a tentative schedule for review of the MDIF.

July 25-Aug. 29, 1985	Review of draft by Metropolitan and Community Development Committee (MCDC)
Week of Aug. 26, 1985	Briefing of metropolitan commissions
Week of Sept. 16, 1985	2-3 public meetings
September 23, 1985	Planners' Forum
September 24, 1985	Business community meeting
October 3, 1985	MCDC considers final changes to MDIF
October 10, 1985	Metropolitan Council approves MDIF draft document for public hearing and sets public hearing date
Week of Nov. 18-22, 1985	Public hearing(s)
December 2-6, 1985	Hearing record closes
December 19, 1985	MCDC consider MDIF for adoption
January 9, 1985	Council adopts MDIF

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or the proposed MDIF, call Bob Davis of the Council's Comprehensive Planning staff at 291-6317.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. §15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612)296-2805. Application deadline is September 3, 1985.

INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL has 1 vacancy open for a representative of a city of the 4th class. The council assists local governments in developing automated information systems by awarding grants. Members are appointed by the Commissioner of Administration. Monthly meetings. For specific information contact the Intergovernmental Information Systems Advisory Council, Roger Sell, Centennial Bldg., 5th Floor, 658 Cedar St., St. Paul 55155; (612)297-2172.

SOLID WASTE MANAGEMENT ADVISORY COUNCIL has 1 vacancy open immediately for a citizen representative. Experience is desirable but not required in the following areas: solid waste collection, processing, and disposal; and solid waste reduction and resource recovery. The Council makes recommendations to the Waste Management Board on its solid waste management activities. To maintain geographic balance of the council, a citizen representative from the metropolitan area is preferred. Members are appointed for two-year renewable terms by the Chairman of the Waste Management Board. The current appointment term expires 6/30/86. Meetings twice monthly in the metropolitan area; members are compensated for expenses. For specific information, contact Robert Dunn, Chairman, Waste Management Board, 7323 58th Ave. N., Crystal 55428; (612)536-0816. The outstate telephone number is 1-800-652-9747.

SOUTHERN MINNESOTA RIVERS BASIN ADVISORY COUNCIL has 1 vacancy open for a resident of Minnesota River basin or Southeast Mississippi tributaries basin. The council advises the Environmental Quality Board about the development of a conservation plan for the Southern Minnesota Rivers Basin. Members are appointed by the chair of the Environmental Quality Board with the Board's concurrence. Monthly meetings; members receive \$35 per diem and expenses. For specific information contact the Southern Minnesota Rivers Basin Advisory Council, 100 Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612)296-0676.

ADVISORY TASK FORCE (EDUCATIONAL MATERIALS FOR MINNESOTA HISTORY AND GOVERNMENT) has 15

vacancies open for school board members, historians, educators, and staff of the Dept. of Education. The task force shall advise the Minnesota Historical Society about developing and publishing instructional materials on Minnesota history and government for students in grades 5-7. Members are appointed by the Commissioner of Education. Members receive expenses. For specific information contact the Advisory Task Force (Educational Materials for Minnesota History and Government), Daniel Loritz, 709 Capitol Square Building., St. Paul 55101; (612)296-3271.

BOILER OPERATING ENGINEERS TASK FORCE has 11 vacancies open for members who have had experience as a licensed boiler operator or Boilermaker. The task force shall study problems related to boiler operating engineers and State of Minnesota Rules (5225.0900-5225.5200) that govern the operation of boilers and licensing of operating engineers. Members are appointed by the Commissioner of Labor and Industry. Members receive compensation for parking only. For specific information contact the Boiler Operating Engineers Task Force, Cynthia Thompson, Space Center, 444 Lafayette Rd., St. Paul 55101; (612)297-3467.

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL has 1 vacancy open for a member. The council shall advise the Commissioner of Administration on the small business procurement program, reviews complaints from vendors, and reviews compliance reports. Members are appointed by the Commissioner of Administration. Members receive no compensation. For specific information contact the Small Business Procurement Advisory Council, Wendy Van Kuyk, 112 Administration Bldg., St. Paul 55155; (612)297-4412.

ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY has 1 vacancy open for a member. The authority shall implement loan programs that assists and encourage the establishment, maintenance and growth of small business in Minnesota; assist the financing and development of alternating sources of energy and energy conservation; assist in the financing of improvements to public buildings for the purpose of energy conservation or the use of alternative energy resources. Members are appointed by the Governor. Members receive \$35 per diem. Members must file with Ethical Practices Board. For specific information contact the Energy and Economic Development Authority, Edward Meyers, Dept. of Energy and Economic Development, 980 American Center, 150 E. Kellogg Blvd., St. Paul 55105; (612)296-6424.

BOARD OF ACCOUNTANCY has 1 vacancy open for a licensed public accountant. The board examines, licenses and regulates certified public accountants and public accountants. Members are appointed by the Governor. Members must file with Ethical Practices Board. Four meetings a year plus any emergency meetings necessary. Members receive \$35 per diem. For specific information contact the Board of Accountancy, Dept. of Commerce, 590 Metro Square Bldg., St. Paul 55101; (612)296-7937.

TASK FORCE ON AN ACADEMIC HIGH SCHOOL LEAGUE has 15 vacancies open for members. The task force shall include one member from the State Committee of the North Central Association and one member from the Advisory Committee for Programs of Excellence. The task force shall study and make recommendations to the Minnesota Academic Excellence Foundation and Education Committees of the Legislature regarding the establishment of an Academic High School League. Members are appointed by the Minnesota Academic Excellence Foundation. For specific information contact the Task Force on an Academic High School League, Toyse A. Kyle, 751 Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612)297-1875.

State Board of Vocational Technical Education

Outside Opinion Sought Regarding Proposed Rules Governing the Rules for Licensure of Post-Secondary Vocational Education Personnel

Notice is hereby given that the State Board of Vocational Technical Education is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the licensure of post-secondary personnel in public area vocational technical institutions in the following program areas: automated systems maintenance, telecommunications system technician, computer-aided printed circuit technician, textile and apparel occupations, cardiac technician, and public safety communicator. The promulgation of these rules is authorized by Minn. Stat. Section 136C.04, subd. 9 (1984).

The State Board of Vocational Technical Education requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit written statements of information or comment orally. Written statements should be addressed to:

Helen Henrie, Assistant to the Director
State Board of Vocational Technical Education
565 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

OFFICIAL NOTICES

Oral statements will be received during regular business hours over the telephone at (612) 297-4575 and in person at the above address.

All statements of information and comments shall be accepted until October 1, 1985. Any written material received by the State Board of Technical Education shall become part of the record in the event that the rules are adopted.

August 19, 1985

Joseph P. Graba, Director
State Board of Vocational
Technical Education

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration

Office Space Wanted for Department of Human Services

The Dept. of Administration desires proposals for rental of approx. 135,000 usable sq. ft. of office space, 11,400 of usable sq. ft. of special space and approx. 6,600 usable sq. ft. of storage type space for the Dept. of Human Services. Close proximity to the State Capitol complex is desired. Contact the Dept. of Administration, Real Estate Management Division, 50 Sherburne Ave., Rm. G22, St. Paul, MN 55155, (612) 296-6674. Proposals must be submitted by 4:30 p.m. (CDT) on Friday, September 27, 1985.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
55103-03617	Thymatron	Human Services— Moose Lake State Hospital	Moose Lake	Contact buyer
5000-01005 Contract	Lease of Folding & Inserting Machine Hematology & platelet reference Control	Arts Board Health	St. Paul Minneapolis	Contact buyer \$14,000-15,000
27158-45869	Spectrophotometer	Arrowhead Community College	Virginia	Contact buyer
27144-46627 Rebid	Hockey clothing	Itasca Community College	Grand Rapids	Contact buyer
29000-40586 Contract	Truck Rubbish Disposal	Natural Resources Human Services— Glen Lake Sanitorium	St. Paul Minnetonka	Contact buyer Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Various	Meat & Meat Products for the month of August	Various	Various	Contact buyer
07-700-34803-1595	Organ Donor Pamphlet	Public Safety	St. Paul	Contact buyer
55-000-92354-1503	Notice of Action—MA or GAMC	Human Services	St. Paul	Contact buyer
67-330-11094-1664	Cert. of Real Estate Value	Revenue	St. Paul	Contact buyer
21-200-10536-1527	DJT 4 & 6 Assembly	Jobs & Training (Economic Security)	St. Paul	Contact buyer
29-005-08011	Addendum #1—Telephone System	Natural Resources	Rochester	Contact buyer
06-000-05419	Purchase CUP System	Attorney General	St. Paul	Contact buyer
55-304-06769	Riding Lawn Mower	Human Services— Brainerd State Hospital	Brainerd	Contact buyer
07-300-35856	Car	Public Safety	St. Paul	Contact buyer
78-830-07760	Cotton for Mattresses	MN Correctional Facility	St. Cloud	Contact buyer
42-206-07895	Modular Open Space Office System	Labor & Industry	St. Paul	Contact buyer
Rebid				
67-260-11122-1658	1985 Income Tax Booklets	Revenue	St. Paul	Contact buyer
67-260-11123-1660	Sales & Use Tax Instruction Book	Revenue	St. Paul	Contact buyer
67-260-11119-1655	1985 MN Income Tax Envelope	Revenue	St. Paul	Contact buyer
67-260-11092-1659	1985 Package XM	Revenue	St. Paul	Contact buyer
67-260-11121-1657	1985 Income Tax Forms & Instructions	Revenue	St. Paul	Contact buyer
79-500-02846	Janitorial Service Contract	Transportation	Golden Valley	Contact buyer
79000-46851	Sarasota Card Rack	Transportation	St. Paul	Contact buyer
Contract	Rubbish Disposal	Anoka Ramsey Community College	Anoka	Contact buyer
26071-15675	Library Shelving	Mankato State University	Mankato	Contact buyer
29000-40023 Rebid	Telephone Answering Machine	Natural Resources	Various	Contact buyer
78620-25388	Mailing Machine & Scale	MN Correctional Facility	Stillwater	Contact buyer
26071-15467	Offset Press	Mankato State University	Mankato	Contact buyer
27148-46663	Accidental Death, Accidental Dismemberment, Accidental Medical Insurance for the Participants at Rochester Community College	Rochester Community College	Rochester	Contact buyer

Contact 296-6152 for referral to specific buyers.

Minnesota Historical Society

Contract Available for Printing of Pilot Minnesota History Textbook

The Minnesota Historical Society will require the services of a qualified printer to print and deliver a textbook narrative and textbook activity book for a Minnesota History Textbook Pilot. Sealed bids, all in accordance with specifications prepared by the Educational Services Division of the Minnesota Historical Society, will be received until 2:00 p.m. Friday, August 16, 1985 in the Society's Contract Administration Office, 1500 Mississippi Street, St. Paul, MN 55101. Bids will be publicly opened and read aloud. Bids received after the specified time will be returned unopened.

Each bid must be accompanied by a cash deposit, cashier's check, certified check, or bidder's bond acceptable to the Minnesota Historical Society in an amount equal to 5% of the bid payable to the Minnesota Historical Society, without conditions, as a guarantee that the bidder, if awarded the contract, will promptly execute such contract in accordance with the bid.

STATE CONTRACTS

Copies of specifications are available at the Contract Administration Office, 1500 Mississippi Street, St. Paul, MN 55101. There is a \$25.00 deposit to obtain a copy of the specifications.

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein.

All bidders are encouraged to investigate the use of socially and economically disadvantaged firms as sub-contractors. This project will be accomplished through State Assistance Funds. Bidders will be required to comply with State Requirements regarding Non-Discrimination and Wage Rates.

It is anticipated that the contract will run from approximately August 23 to September 27, 1985. The project cost is expected not to exceed \$25,000.00.

QUALIFICATIONS:

1. All bidders must meet with Earl Gutnik, Minnesota Historical Society designer, prior to submission of bids.
2. All alternative papers, screening methods, and separations that vary from the specifications must be approved prior to bidding and must be listed on the bid sheet provided.
3. Three references included with bid.
4. Samples of printer's work that demonstrate recent (within the last two years) experience with illustrated publications of a similar format and show ability to handle 4-color work must be submitted along with bid.
5. The Minnesota Historical Society reserves the right to visit the printer's shop.

Final contract award shall be based on the qualifications above, evaluation of references, samples of the work, and the economy of the bid.

It is understood that the Society will require a Performance Bond equal to 100% of the Contract Price, Certificates of Insurance, and Evidence of Workers Compensation during development of the Contract.

Interested bidders should send bid, bid security, names of three references, and samples of their relevant work to Gloria A. Thompson, Contracting Officer, 1500 Mississippi Street, St. Paul, MN 55101 no later than the specified time noted in paragraph one, above.

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Board on Aging

State Funds Available For A Nursing Home Resident and Family Council Program

Notice is hereby given that the Minnesota Board on Aging, pursuant to Chapter 267, Minnesota Laws 1985, is seeking letters of intent for proposals for the development and implementation of a statewide program to provide educational services to resident and family advisory councils in nursing and boarding care homes. The educational services provided must include 1) care in the nursing home or board and care home; 2) resident rights and responsibilities; 3) resident and family council organization and maintenance; 4) laws and rules that apply to homes and residents; 5) human relations; and 6) resident and family self-help methods to increase quality of care and quality of life.

A grant of approximately \$170,000 will be awarded to the eligible applicant to provide the statewide program for the period beginning no later than January 1, 1986 and ending on June 30, 1987. As required by Chapter 267, Minnesota Laws 1985, the eligible grantee must be a statewide, independent, nonprofit, consumer-sponsored agency.

Letters of intent must be received by August 26, 1985 at the Minnesota Board on Aging, 204 Metro Square, St. Paul, Minnesota

55101. Those who fail to meet this deadline will no longer be considered for the program grant award. A special meeting on September 12, 1985 will be conducted for those who submit letters of intent by the August 26th deadline.

Inquiries should be directed to:

Jim Varpness
Minnesota Board on Aging
204 Metro Square
St. Paul, Minnesota 55101
(612) 296-2770

Department of Energy and Economic Development Energy Division

Community Energy Council Grant Funds Available

Pursuant to Minnesota Rules 4160.5100-4160.5900 the Department of Energy and Economic Development announces that it is accepting applications for community energy council grants from cities and counties, individually, collectively, or through the exercise of joint powers agreements. The maximum amount of a grant to an individual applicant is \$15,000. The maximum amount of a grant to a joint application is \$15,000 for the first applicant and \$12,000 for each additional applicant to a maximum of \$50,000. All grants require at least a ten percent local match.

Funds are available from two sources, as follows:

1) State funds of \$120,000. Funds are available from this source to support a variety of local energy programs in different energy use sectors.

2) Amoco Second Stage Refund of \$79,535. To qualify for a grant from this source, applicants must propose a transportation energy conservation program from the following list:

- a. Public transit or ride share promotions
- b. Car care clinics
- c. Driver education for energy efficient driving habits
- d. Bike and hike days
- e. Traffic flow synchronization
- f. Other transportation energy conservation projects.

Applicants may also propose additional projects introduced above in 1) and detailed in the program rules.

Applications must be received no later than 4:30 p.m. on September 12, 1985 at the address given below.

Application forms, program rules and other information can be obtained by contacting:

Mark Schoenbaum
Department of Energy and Economic Development
900 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-3602

Department of Health

Funds Available for Nonsmoking Demonstration Projects

The Minnesota Department of Health will have special funds available for the 1986-1987 biennium for demonstration projects promoting nonsmoking and/or preventing the use of other tobacco products. Approximately \$500,000 is available for the biennium under the provisions of the Nonsmoking and Health grants, Minnesota Special Session Laws of 1985, Chapter 14, Article 19, Section 24.

Local boards of health are eligible to apply for grants for community-wide programs. Local boards of health and nonprofit organizations are eligible to apply for grants for state-wide programs.

STATE GRANTS

Community-wide programs will be expected to:

- demonstrate a coordinated approach to the promotion of nonsmoking involving the cooperation of a variety of local agencies, groups and organizations;
- focus on the promotion of nonsmoking behavior rather than the more traditional "danger" or fear-arousal approach;
- call for careful evaluation to indicate changes in smoking rates or tobacco use, as well as changes in attitudes, knowledge and beliefs about smoking or tobacco use.

Examples of programs would include: the formation of a local technical advisory committee, patterned on the state model, to formulate a local plan for the promotion of nonsmoking; a plan to make local health care institutions smoke-free; the promotion of nonsmoking environments using a variety of approaches (media campaigns, school curriculums, community organizing, promotions, contests).

State-wide programs will be expected to meet the above criteria in addition to being state-wide in scope and of a nature supportive to local efforts.

All projects, community-wide and state-wide, should be of a demonstrative nature and include comprehensive evaluation. In-depth training and planning are likely elements of a successful project during its first year. A limited number of projects will be funded on a competitive basis for up to approximately \$50,000 per year.

Local boards of health and non-profit organizations interested in applying for funds should submit a Notice of Intent to:

Commissioner of Health
Minnesota Department of Health
717 S.E. Delaware St.
P.O. Box 9441
Minneapolis, MN 55440
Attention: Grants Management, Room 232-G

The Notice of Intent must be received by the Department of Health no later than 4:30 p.m., Friday, September 6, 1985. It must include the following information:

Name of Applicant Organization
Name, Address and Telephone Number of a Contact Person
Name of Proposed Project
Proposed Geographic Area

A copy of the Notice of Intent should also be sent to:

Donald O. Hedman
Minnesota Center for Health Promotion and Education
Minnesota Department of Health
717 S.E. Delaware St.
P.O. Box 9441
Minneapolis, MN 55440
(612) 623-5367

Application materials will be mailed during the week of September 9, 1985, to all agencies and organizations expressing an intent to apply. Completed applications must be received by the Minnesota Department of Health no later than 4:30 p.m., Friday, November 8, 1985. Projects selected for funding will be announced Monday, November 25, 1985.

Funds for approved grants will be awarded on a calendar year basis for the period of January 1, 1986, through December 31, 1987. Funding for the full award period of all grants will be dependent upon state appropriations.

NON-STATE PUBLIC CONTRACTS

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Minnesota Counties Computer Cooperative

Request for Proposals for Software Products for Property Tax Assessment

The Minnesota Counties Computer Cooperative (MCCC), a joint powers organization with fifty-one member counties, is soliciting proposals from qualified firms for maintenance and support of property tax assessment, calculation, and collection software products used by Minnesota counties which use IBM Systems 34 and 36. All inquiries regarding this Request for Proposals must be directed to:

Joel Oliver, Executive Director
Minnesota Counties Computer Cooperative
555 Park Street, Suite 300
St. Paul, Minnesota 55103
(612) 224-3344

The deadline for proposals to be submitted to the MCCC is November 1, 1985, with the project expected to start April 1, 1986.

SUPREME COURT

Decisions Filed Friday, August 2, 1985

Compiled by Wayne O. Tschimperle, Clerk

C1-84-517 Paul Racine Olson, v. Commissioner of Public Safety, Petitioner. Hennepin County.

In this case the anonymous tip received by the police of a possible drunk driver lacked the requisite minimal indicia of reliability required by the fourth amendment for an investigative stop.

Affirmed. Simonett, J.

Dissenting, Kelley, J., Peterson, J., & Scott, J.,

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota Tax Court Regular Division

Acton Construction Co.; Arcon Construction Co.; Austin P. Keller Co.; Barbarossa & Sons, Inc.; Boring, Inc.; Buesing Brothers Trucking, Inc.; Centennial Contractors Corporation; Central Specialties, Inc.; Consolidated Plumbing & Heating Co.; Continental Tunneling Corporation; Contracting Northwest, Inc.; Dawson Construction, Inc.; Encon Utilities, Inc.; Erwin Montgomery Construction; Fairhaven Electric Corporation; Fraser Construction Co.; Grudem Brothers Co.; Harris Mechanical Contracting Co.; Hayes Contractors, Inc.; Hennen Construction Co.; Hoffman Electric Co.; Lametti & Sons, Inc.; Landwehr Heavy Moving, Inc.; Lysne Construction, Inc.; Moorhead Construction Co.; Mueller Pipeliners, Inc.; Natkin & Company; Nodland Associates, Inc.; Northdale Construction Co.; North States Contracting, Inc.; Orfei & Sons, Inc.; Orvedahl Construction Co.; Park Construction Co.; Progressive Contractors, Inc.; Richard Knutson, Inc.; Robert L. Carr Co.; Shafer Contracting Co., Inc.; Shank Mechanical, Inc.; Thomas & Sons Construction, Inc.; Willman Construction, Inc.; Winona Plumbing Co.; and Young Construction Co., Appellants v. Commissioner of Revenue, Docket No. 4310 (Ramsey District Court File No. TA-547)

Amendment to the Findings of Fact, Conclusions of Law, and Order for Judgment, July 29, 1985

The original Findings of Fact, Conclusions of Law and Order for Judgment in the above-entitled matter were issued June 19, 1985.

On a Motion concurred in by both parties, the Conclusions of Law and Order for Judgment are hereby amended by adding a new paragraph, No. 2, which reads as follows:

“2. During the course of the proceedings, appellants filed a Motion for Partial Summary Judgment as to claims for refund for only two representative parties and as to the issue of the right to refund for these same two representative parties with a request for an express determination that ‘there is no just reason for delay’ within the meaning of Rule 54.02, Minnesota Rules of Civil Procedure, and Rule 104.01, Minnesota Rules of Civil Appellate Procedure. This Court has determined that there is no just reason for delay and does hereby direct the entry of a final judgment with respect to appellants’ Motion for Partial Summary Judgment.”

IT IS SO ORDERED.

July 29, 1985

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

State of Minnesota Tax Court Regular Division

Burlington Northern Railroad Company, Appellant, v. The Commissioner of Revenue, Docket No. 4095

Findings of Fact, Conclusions of Law and Order for Judgment Dated July 29, 1985

The above-entitled matter came on for hearing before the Minnesota Tax Court in St. Paul, Minnesota, on February 28, 1985, Judge M. Jean Stepan presiding. In addition to the testimony given at the trial, a written stipulation of facts was submitted to the Court.

Jeffrey D. Lerner, Assistant General Counsel for Burlington Northern Railroad, appeared for appellant.

Amy Eisenstadt, Special Assistant Attorney General, appeared for appellee.

The Court, having considered the arguments and briefs of counsel and upon all the files and records herein, now makes the following:

Findings of Fact

1. Appellant, Burlington Northern Railroad Company, is a corporation organized and existing under the laws of the State of Delaware, with Minnesota offices at 176 East Fifth Street, St. Paul, Minnesota 55101 (Stip., paragraph I).

2. Burlington Northern Railroad Company (BN) timely filed its Minnesota corporate income tax return for its taxable year ending December 31, 1979 (Stip., paragraph I).

3. On November 1, 1979, BN acquired the assets of a wholly owned subsidiary, the Spokane, Portland and Seattle Railway Company (SP&S), through a tax-free liquidation pursuant to section 332 of the Internal Revenue Code of 1954 and section 290.134 of the Minnesota Statutes (as then in effect). Prior to that time, the SP&S was not subject to the Minnesota corporate income tax (Stip., paragraph II; transcript, p. 17).

4. As of November 1, 1979, the net book basis of the depreciable assets of the SP&S was \$56,627,793. The book basis of depreciable railroad assets is determined under the Uniform System of Accounts for Railroad Companies, prescribed by the Interstate Commerce Commission. This system for depreciation is based upon service life studies which are performed and approved by the Interstate Commerce Commission. Depreciation charges are computed by applying to the cost of property such percentage rates as will distribute the service value by the straight-line method in equal annual charges during the estimated life of the property. Railroads are required to maintain detailed information to support their depreciation charges which must be reported annually to the Interstate Commerce Commission. The net book basis of the assets of the SP&S more accurately reflects the actual remaining service value of those assets as of November 1, 1979, than does the net federal tax basis (Stip., paragraph III; transcript, pp. 9-11 & 18-19).

5. The net federal tax basis of the depreciable assets of the SP&S as of November 1, 1979 was \$16,043,423. The difference between the net federal tax basis and the net book basis of the SP&S assets as of that date is attributable to the use, for federal tax purposes, of various rates and methods of accelerated depreciation (including rapid five-year amortization of Korean War property) and other basis adjustments made pursuant to the Internal Revenue Code (Stip., paragraph IV).

6. On its Minnesota Corporation Income Tax Return for the taxable year ending December 31, 1979, BN claimed an additional depreciation deduction in the amount of \$88,310,314 (Stip., paragraph V; Exhibit 1-A, statement no. 2). That additional deduction is comprised of two components:

(a) Additional depreciation in the amount of \$87,182,970, resulting from the fact that prior to 1975, railroads were not subject to Minnesota corporate income tax but were subject to a gross earnings tax. Accordingly, prior to 1975, no depreciation deduction had been claimed by BN with respect to its depreciable railroad operating assets for Minnesota tax purposes. When BN became subject to the Minnesota corporate income tax on January 1, 1975, it was agreed between the parties to this action that BN could claim depreciation with respect to the difference between its net book basis as computed under the ICC System of Accounts and its federal adjusted tax basis. Accordingly, BN claimed an additional depreciation deduction on its Minnesota Corporate Income Tax in 1979 in the amount of \$87,182,970. This adjustment is not in dispute. (Stip., paragraph VI(a).)

(b) The second component of the additional deduction for depreciation claimed on the 1979 return is a \$1,127,344 amount representing the additional depreciation on the assets acquired on November 1, 1979 from the Spokane, Portland and Seattle Railway Company. It is this additional deduction which is in dispute in this case. The additional deduction for depreciation on the SP&S assets represents a portion of the difference between the net book basis of those assets as of November 1, 1979 and the federal adjusted tax basis as of that date, claimed over a 12-year period using the double-declining-balance method. The only issue in this case is whether BN is entitled to claim an additional depreciation deduction on the difference between the net book basis and

TAX COURT

the federal adjusted tax basis of the SP&S assets. The method by which BN computed the additional depreciation deduction for 1979 with respect to this difference in basis is not contested by appellee. (Stip., paragraph VI(b).)

7. On September 14, 1981, appellee issued a Notice of Change in Tax relating to appellant's taxable years ending December 31, 1972 through December 31, 1979, in which he determined inter alia that BN was not entitled to an additional depreciation deduction with respect to the assets acquired from the SP&S. Appellant protested certain of the findings set forth in the Notice of Change issued September 14, 1981, including the determination by appellee that appellant was not entitled to an additional depreciation deduction with respect to the assets acquired from the SP&S. In a notice dated March 16, 1984, on which this appeal is based, appellee reaffirmed his determination that appellant was not entitled to the additional \$1,127,344 deduction for depreciation claimed on its 1979 Minnesota Corporate Income Tax Return with respect to the former SP&S assets. (Stip., paragraphs VII, VIII).

Conclusions of Law

1. Appellant properly claimed an additional deduction for depreciation with respect to the difference between the net book basis of the assets which it acquired from the SP&S and their federal adjusted tax basis.

2. The Commissioner of Revenue's Order is reversed to the extent that it disallows the additional deduction so claimed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

July 29, 1985

By the Court,
M. Jean Stepan, Judge
Minnesota Tax Court

ORDER FORM

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Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Contact: Senate Public Information Office
B29 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Contact: House Information Office
Room 8 State Capitol, St. Paul, MN 55155
(612) 296-2146

Legislative Reference Library
Room 111 Capitol

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